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In re Application of : Stanzel et al.
Serial No. : 10/709,540
Filed : May 12, 2004
For : GAS BOTTLE FOR WELDING-TYPE DEVICES
Group Art No. : 1725
Examiner : Kevin P. Kerns

CERTIFICATION UNDER 37 CFR 1.8(a) and 1.10

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PRE-APPEAL BRIEF CONFERENCE REQUEST

Dear Sir:

Applicant hereby requests pre-appeal review of the final rejection in the above-identified Application. The request is being filed with a Notice of Appeal. Review is requested for the reasons set forth hereinafter.

REMARKS

Claims 39-56 are pending in the present application. In the Final Office Action mailed June 11, 2007, the Examiner rejected claims 49-52 under 35 U.S.C. §102(b) as being anticipated by DE 83 08 999.3. The Examiner next rejected claims 39-42 under 35 U.S.C. §103(a) as being unpatentable over DE ‘999.3 and further in view of Gartland (USP 4,782,204). Claims 43 and 44 are rejected under 35 U.S.C. §103(a) as being unpatentable over DE ‘999.3 in view of Andersen (USP 6,590,184).

Claims 53-56 are allowed. Claims 45-48 were indicated as containing allowable subject matter. Such indication is appreciated.

Applicant believes the panel has the authority to overturn these rejections because this request relies on the fact that, through procedural errors, the Examiner has not satisfied the burden to establish a prima facie case of unpatentability or obviousness in the rejections of claims 49-52 under 35 U.S.C. §102(b) and claims 39-42 under 35 U.S.C. §103(a). Furthermore, claimed elements in each of claims 39, 49 and 51 are wholly absent from the cited references.

Rejection of claim 39 under §103(a) over DE ‘999.3 in view of Gartland

The Examiner rejected claim 39 under 35 U.S.C. §103(a) as being unpatentable over DE 83 08 999.3 (DE ‘999.3) in view of Gartland, stating that “DE ‘999.3 discloses a welding device comprising a housing (2) enclosing a power source, a gas cylinder (1) attached to the housing, wherein the gas cylinder has a length that is less than a length of a side of the housing and the gas cylinder is fluidly connected to the welding device by translating the gas cylinder along the longitudinal axis of the gas cylinder...” *Office Action*, June 11, 2007, p. 3. However, the Examiner admitted that “DE ‘999.3 fails to teach an adapter fluidly connected to a torch,” but that “Gartland discloses an adapter (31) fluid[ly] connected to a torch for the purpose of elevating the gas flow rate.” *Office Action*, supra at 4. Thus, the Examiner concluded that “it would have been obvious to [one of] ordinary skill in the art at the time applicant’s invention was made to have an adapter taught by Garland, in DE ‘999.3, in order to elevate air flow.” *Id.* Applicant respectfully disagrees. Specifically, Applicant believes that neither DE ‘999.3 or Gartland teach or suggest an adapter and gas cylinder arrangement as called for in claim 39.

Claim 39 calls for, in part, a welding device having an adapter fluidly connected to a torch of the welding device without a manually adjusted valve therebetween and a gas cylinder that is automatically fluidly connected to the torch by translating the gas cylinder along a longitudinal axis of the gas cylinder and into contact with the adapter. As set forth above, the

Examiner admitted that “DE ‘999.3 fails to teach an adapter fluidly connected to a torch.” *Id.* Thus, the Examiner relies upon the disclosure of Gartland to teach an adapter, which as called for in claim 39, is fluidly connected to a torch and fluidly connects a gas cylinder to the torch when the gas cylinder is translated along a longitudinal axis of the gas cylinder and into contact with the adapter. Applicant respectfully believes that Gartland does not teach or suggest such an adapter and connection of the gas cylinder to the adapter as is called for in claim 39.

Gartland discloses a gas metal arc welding (GMAW) system that includes a torch 11 and a power source 24. *Gartland*, Col. 3, Ins. 1-17. In one embodiment, air from a source 32 is delivered to torch 11 by way of an adapter unit 31 located between the air source 32 and torch 11. *Gartland*, Col. 3, Ins. 38-48. Air source 32 is connected to adapter 31 by way of a supply hose 35, and the flow of air to adapter 31 from source 32 is controlled by a regulator valve 33 and manual adjustment means 33’ included on air source 32. *Gartland*, Col. 3, Ins. 48-53. The arrangement disclosed in Gartland, however, is not what is called for in claim 39. That is, claim 39 calls for a welding system in which the gas cylinder is fluidly connected to the torch by translating the gas cylinder along a longitudinal axis of the gas cylinder and into contact with the adapter, with no need for adjustment of a manual valve between the adapter and the torch. There is no teaching or disclosure in Gartland that air source 32 is fluidly connected to torch 11 without the adjustment of a manual valve. Rather, as described above, manual adjustment means 33’ requires an operator to manually adjust/control the flow of air from source 32 to adapter 31 and out to torch 11.

Additionally, claim 39 specifically calls for the fluid connection between the gas supply and the torch to occur when the gas supply is translated into contact with the adapter. Gartland does not teach such an arrangement, but rather, discloses that supply hose 35 is what connects air source 32 to adapter 31, and thus, air source 32 does not contact adapter 31. Thus, there is no contact between the air source 32 and adapter 31 in the system of Gartland, as is specifically called for in claim 39.

In response to these arguments set forth by Applicant regarding claim 39, the Examiner reasserted in the Advisory Action dated August 20, 2007, that “Gartland discloses the adapter 31 and gas cylinder arrangement 20... of claims 39-42.” *Advisory Action*, August 20, 2007, p. 2. However, while Gartland may disclose an adapter, the adapter of Gartland is not fluidly connected to a torch of the welding device without a manually adjusted valve therebetween, as is called for in claim 39. This limitation cannot be overlooked. Instead, Gartland requires that a manual adjustment means 33’ be manually adjusted by an operator to control the flow of air from

a source 32 to adapter 31 and out to torch 11. Furthermore, Gartland simply does not teach or suggest fluid connection between the gas supply and the torch to occur when the gas supply is translated into contact with the adapter, as the air source 32 and adapter 31 in of Gartland do not even contact one another. Thus, despite the Examiner's continued assertions to the contrary, Gartland simply does *not* teach or suggest an adapter and gas cylinder arrangement as called for in claim 39.

As the Examiner has plainly admitted that DE '999.3 does not teach an adapter as called for in claim 39, and since Gartland too does not teach or suggest an adapter that contacts a gas cylinder to fluidly connect the gas cylinder to the torch without the adjustment of a manual valve, Applicant respectfully believes that claim 39, and the claims dependent therefrom, are patentably distinct over the cited references.

Rejection of claims 49 and 51 under §102(b) as anticipated by DE '999.3

The Examiner rejected claim 49 under 35 U.S.C. §102(b) as being anticipated by DE '999.3, stating that DE discloses "the method of providing shielding gas comprising the steps of initiating an arc, opening the gas path to a gas system and providing shielding gas immediately upon connection of a gas source to the welding device...." *Office Action*, supra at 2. The Examiner further stated that "[t]he term 'immediately' does not provide a specific time frame" and that "[b]ased on broadest interpretation, DE '999.3 would immediately turn on the gas upon connection to the gas source." *Id.* at 5. As explained in the previous Response, Applicant believes that claim 49 is patentably distinct over DE '999.3 regardless of the import of the term "immediately." Specifically, Applicant believes that DE '999.3 fails to teach or suggest that a shielding gas path is opened and provides shielding gas to a gas system upon connection of a gas source to a welding-type device.

DE '999.3 discloses a CO₂ welding set having a housing 2 that encloses a power source therein. *DE '999.3*, p. 3, lns. 6-15. A pressure bottle 1 containing CO₂ is also positioned within housing 2 and includes a threaded valve 6 thereon that controls gas flow from pressure bottle 1. *Id.* A pressure reducing valve 5 is positioned downstream from gas bottle 1 and valve 6 and controls gas pressure of CO₂ entering a gas hose in the CO₂ welding set. *Id.* at lns. 16-19. DE '999.3, however, does not teach or disclose that gas cylinder 1 is configured to be in fluid communication upon connection to the welding set as is called for in claim 49. Rather, as shown in the figure of DE '999.3, gas cylinder 1 includes a threaded valve 6 that is positioned in the gas path formed between pressure bottle 1 and pressure reducing valve 5 and that restricts air flow

therebetween. Threaded valve 6 is shown as a traditional crank-type valve that must be manually opened and closed (i.e., turned) to control gas flow from pressure bottle 1. *See DE '999.3, Figure.* That is, gas cylinder 1 is not fluidly connected to the welding set based simply on its connection thereto as is called for in claim 49, but an additional manual manipulation of a valve is required to create a fluid communication and provide shielding gas from the gas cylinder to the welding set. Thus, DE '999.3 does *not* teach or disclose a method for providing shielding gas immediately upon connection of a gas source to a welding-type device and, as such, claim 49 and the claims dependent therefrom are patentably distinct over the cited reference.

The Examiner also rejected claim 51 under 102(b) over DE '999.3, stating that the cited reference discloses “the welding device comprising, means for generating power; means for providing shielding gas; and means for connecting the means for providing shielding gas and the means for generating power upon connection of the means for providing shielding gas and the means for generating welding power (figure).” *Office Action*, supra at 2. Applicant respectfully disagrees, as the cited reference does not teach or disclose means for fluidly connecting the means for providing shielding gas and the means for generating welding power upon connection of the means for providing shielding gas and the means for generating welding power as called for in claim 51.

As set forth above in regards to claim 49, DE '999.3 does not teach or disclose that gas cylinder 1 therein provides shielding gas upon connection to the welding set. That is, there is no means for fluidly connecting the gas cylinder 1 with the welding set upon connection of the gas cylinder to the welding set as called for in claim 51. Rather, as shown in the figure of DE '999.3, pressure bottle 1 includes a threaded valve 6 thereon that must be actuated separately from the connection of the gas cylinder 1, as shown by the crank-type valve illustrated in the figure of DE '999.3. The separate manual manipulation of the crank-type valve of DE '999.3 clearly indicates that gas cylinder 1 is not in fluid communication with the welding set merely by its connection thereto. Such a conclusion is illogical and ignores the structure and teachings of DE '999.3. In light of the above, DE '999.3 clearly does not teach or disclose a means for fluidly connecting the gas cylinder and the welding set merely by connection of one to the other. As such, claim 51 and the claims dependent therefrom are patentably distinct over the cited reference.

In response to these arguments set forth by Applicant regarding claims 49 and 51, the Examiner reasserted in the Advisory Action that “DE '999.3 discloses the features of claims 49-52... as DE '999.3 includes the applicants' broad limitation ‘upon connection’.” *Advisory Action*, supra at 2. As set forth in detail above, Applicant believes that the Examiner has

mischaracterized the teachings of DE ‘999.3 and has ignored express limitations in the claims, as gas cylinder 1 of DE ‘999.3 is *not* fluidly connected to the welding set based simply on its connection thereto, but an additional manual manipulation of a valve is required to create a fluid communication and provide shielding gas from the gas cylinder to the welding set. In the context of the present claims, one skilled in the art would understand the phrase “upon connection” to mean that the gas cylinder is configured to be in fluid communication with the welding set based solely on its connection thereto, without the need for further required intermediate steps, such as manipulation of a manual valve. Clearly, DE ‘999.3 does not teach or suggest fluid communication between the gas cylinder and the welding set upon connection of the gas cylinder thereto, and as such, the cited reference fails to teach that which is called for in claims 49 and 51.

Therefore, in light of at least the foregoing, Applicant respectfully believes that the present application is in condition for allowance. As a result, Applicant respectfully requests timely issuance of a Notice of Allowance for claims 39-56.

Applicant appreciates the Panel’s consideration of these Remarks and respectfully requests allowance of claims 39-56.

Respectfully submitted,

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